Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Text

PAGE 01 STATE 179960
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EUR/SE - H.COLLUMS
CA-R.HENNEMEYER(SUB)
JUSTICE - M. ABBELL (DRAFT)
L/EUR - J.CROOK
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C O N F I D E N T I A L STATE 179960

E.O. 11652:GDS

TAGS: CASC, TU

SUBJECT:U.S. DRAFT OF PRISONER EXCHANGE TREATY

1. FOLLOWING IS TEXT OF U.S. DRAFT BILATERAL PRISONER EX-
CHANGE TREATY PRESENTED TO TURKISH AMBASSADOR BY COUNSELOR
NIMETZ ON JULY 17. REPORT ON MEETING AND INSTRUCTIONS FOR
EMBASSY FOLLOW-UP BEING TRANSMITTED SEPTEL.

"DRAFT TREATY BETWEEN THE UNITED STATES OF AMERICAN AND THE
REPUBLIC OF TURKEY ON THE EXECUTION OF PENAL JUDGMENTS

THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TURKEY,
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PAGE 02 STATE 179960

CONSIDERING THAT THE FIGHT AGAINST CRIME, WHICH IS BE-
COMING INCREASINGLY AN INTERNATIONAL PROBLEM, CALLS FOR
MUTUAL COOPERATION AIMED AT THE PROTECTION OF SOCIETY;

CONSCIOUS OF THE NEED TO RESPECT HUMAN DIGNITY AND TO
PROMOTE THE REHABILITATION OF OFFENDERS;

HAVE AGREED AS FOLLOWS:

PART I

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

DEFINITIONS

ARTICLE 1

FOR THE PURPOSES OF THIS TREATY:

(A) 'PENAL JUDGMENT' MEANS A FINAL DECISION RENDERED BY A COURT IN A CRIMINAL PROCEEDING.

(B) 'SENTENCE' MEANS THE IMPOSITION OF A SANCTION, WHETHER OF IMPRISONMENT, PAROLE OR PROBATION.

(C) 'SANCTION' MEANS ANY PUNISHMENT OR OTHER MEASURE INVOLVING A DEPRIVATION OF LIBERTY EXPRESSLY IMPOSED ON A PERSON IN RESPECT OF AN OFFENSE BY A CRIMINAL JUDGMENT IN THE TRANSFERRING STATE.

(D) 'OFFENDER' MEANS A PERSON WHO IN THE TERRITORY OF ONE OF THE PARTIES IS SERVING A SENTENCE NOT UNDER APPEAL OR COLLATERAL ATTACK OR IS ON PAROLE OR SUSPENDED SENTENCE.
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(E) 'TRANSFERRING STATE' MEANS THE PARTY FROM WHICH THE OFFENDER IS TO BE TRANSFERRED.

(F) 'RECEIVING STATE' MEANS THE PARTY TO WHICH THE OFFENDER IS TO BE TRANSFERRED.

PART II

ENFORCEMENT OF CRIMINAL JUDGMENTS

SECTION I

(A) GENERAL CONDITIONS OF ENFORCEMENT

ARTICLE 2

THIS PART IS APPLICABLE TO SANCTIONS INVOLVING DEPRIVATION OF LIBERTY.

ARTICLE 3

1. A PARTY SHALL, IN THE CASES AND UNDER THE CONDITIONS PROVIDED FOR IN THIS TREATY, ENFORCE A SANCTION IMPOSED BY THE OTHER PARTY.

2. THIS COMPETENCE CAN ONLY BE EXERCISED FOLLOWING A REQUEST BY THE OTHER PARTY.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

3. WHERE AN OFFENDER HAS BEEN SENTENCED BY A COURT OF A STATE OF THE OTHER PARTY, THE APPROVAL OF THE APPROPRIATE AUTHORITY OF THAT STATE SHALL ALSO BE REQUIRED.

4. EACH PARTY SHALL DESIGNATE AN AUTHORITY TO PERFORM THE FUNCTIONS PROVIDED IN THIS TREATY.

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PAGE 04 STATE 179960

5. EACH PARTY SHALL TAKE THE NECESSARY LEGISLATIVE MEASURES AND, WHERE REQUIRED, SHALL ESTABLISH ADEQUATE PROCEDURES TO GIVE, FOR THE PURPOSES OF THIS TREATY, LEGAL EFFECT WITHIN ITS TERRITORY TO SENTENCES PRONOUNCED BY COURTS OF THE OTHER PARTY.

ARTICLE 4

1. THE SANCTION SHALL NOT BE ENFORCED BY THE OTHER PARTY UNLESS UNDER ITS LAW THE ACT FOR WHICH THE SANCTION WAS IMPOSED WOULD BE AN OFFENSE IF COMMITTED ON ITS TERRITORY AND THE PERSON ON WHOM THE SANCTION WAS IMPOSED WOULD BE LIABLE TO PUNISHMENT IF HE HAD COMMITTED THE ACT THERE.

2. IF THE SENTENCE RELATES TO TWO OR MORE OFFENSES, NOT ALL OF WHICH FULFILL THE REQUIREMENTS OF PARAGRAPH 1, THE SENTENCING STATE SHALL SPECIFY WHICH PART OF THE SANCTION APPLIES TO THE OFFENSES THAT SATISFY THOSE REQUIREMENTS.

ARTICLE 5

THE SENTENCING STATE MAY REQUEST THE OTHER PARTY TO ENFORCE THE SANCTION ONLY IF ONE OR MORE OF THE FOLLOWING CONDITIONS ARE FULFILLED:

(A) THE PERSON SENTENCED IS A NATIONAL OF THE OTHER STATE;

(B) THE ENFORCEMENT OF THE SANCTION IN THE OTHER STATE IS LIKELY TO IMPROVE THE PROSPECTS FOR THE SOCIAL REHABILITATION OF THE PERSON SENTENCED; OR,
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PAGE 05 STATE 179960

(C) THE OTHER STATE HAS DECLARED ITSELF WILLING TO ACCEPT RESPONSIBILITY FOR THE ENFORCEMENT OF THAT SANCTION.

ARTICLE 6

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Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

ENFORCEMENT REQUESTED IN ACCORDANCE WITH THE FOREGOING PROVISIONS MAY NOT BE REFUSED, IN WHOLE OR IN PART, SAVE:

(A) WHERE THE PERSON SENTENCED HAS DECLINED TO GIVE CONSENT TO ENFORCEMENT UNDER THIS TREATY;

(B) WHERE ENFORCEMENT WOULD RUN COUNTER TO THE FUNDAMENTAL PRINCIPLES OF THE LEGAL SYSTEM OF THE REQUESTED STATE OR WOULD BE INCOMPATIBLE WITH THE OBJECT AND PURPOSE OF THIS TREATY;

(C) WHERE, AT THE TIME THE REQUEST IS MADE, THE SANCTION WILL NOT CONTINUE FOR AT LEAST SIX MONTHS;

(D) WHERE THE REQUESTED STATE CONSIDERS THE OFFENSE FOR WHICH THE SENTENCE WAS PASSED TO BE OF A POLITICAL NATURE OR A PURELY MILITARY ONE;

(E) WHERE ENFORCEMENT WOULD BE CONTRARY TO THE INTERNATIONAL UNDERTAKINGS OF THE REQUESTED STATE;

(F) WHERE THE COMPETENT AUTHORITIES IN THE REQUESTED STATE HAVE DECIDED NOT TO TAKE PROCEEDINGS OR TO DROP PROCEEDINGS ALREADY BEGUN IN RESPECT OF THE SAME ACT;

(G) WHERE THE ACT WAS COMMITTED OUTSIDE THE TERRITORY OF THE REQUESTING STATE;

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PAGE 06 STATE 179960

(H) WHERE THE REQUESTED STATE IS UNABLE TO ENFORCE THE SANCTION;

(I) WHERE THE REQUESTED STATE CONSIDERS THAT THE REQUESTING STATE ITSELF IS BETTER ABLE TO ENFORCE THE SANCTION;

(J) WHERE THE AGE OF THE PERSON SENTENCED AT THE TIME OF THE OFFENSE WAS SUCH THAT HE COULD NOT HAVE BEEN PROSECUTED IN THE REQUESTED STATE;

((K) WHERE UNDER THE LAW OF THE REQUESTED STATE THE SANCTION IMPOSED CAN NO LONGER BE ENFORCED BECAUSE OF THE LAPSE OF TIME.)

ARTICLE 7

WHEN THE RECEIVING STATE HAS NOTIFIED THE TRANSFERRING STATE THAT IT CONSENTS TO TRANSFER OF AN OFFENDER, TRANSFER SHALL TAKE PLACE AS SOON AS POSSIBLE AFTER THE RECEIVING STATE HAS SATISFIED ITSELF THAT THE

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

OFFENDER CONSENTS TO THE TRANSFER. FOR THIS PURPOSE THE TRANSFERRING STATE SHALL AFFORD AN OPPORTUNITY TO THE RECEIVING STATE, IF IT SO DESIRES, TO VERIFY PRIOR TO TRANSFER THAT THE OFFENDER'S CONSENT TO THE TRANSFER IS GIVEN VOLUNTARILY AND WITH FULL KNOWLEDGE OF THE CONSEQUENCES THEREOF, THROUGH AN OFFICER DESIGNATED BY THE LAWS OF THE RECEIVING STATE.

ARTICLE 8

AN OFFENDER TRANSFERRED FOR ENFORCEMENT OF A SANCTION UNDER THIS TREATY MAY NOT BE DETAINED, TRIED OR SEN-
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TENCED IN THE RECEIVING STATE FOR THE SAME OFFENSE UPON WHICH THE SENTENCE TO BE EXECUTED IS BASED. FOR PURPOSES OF THIS ARTICLE THE RECEIVING STATE WILL NOT INITIATE ANY PROSECUTION WHICH WOULD HAVE BEEN BARRED UNDER THE LAW OF THAT STATE, IF THE SENTENCE HAD BEEN IMPOSED BY ANY COURT OF THE RECEIVING STATE.

(ARTICLE 9

FOR THE PURPOSES OF ARTICLE 6, PARAGRAPH K OF THE PRESENT TREATY ANY ACT WHICH INTERRUPTS OR SUSPENDS A TIME LIMITATION VALIDLY PERFORMED BY THE AUTHORITIES OF THE SENTENCING STATE SHALL BE CONSIDERED AS HAVING THE SAME EFFECT FOR THE PURPOSE OF RECKONING TIME LIMITATION IN THE RECEIVING STATE IN ACCORDANCE WITH THE LAW OF THAT STATE.)

ARTICLE 10

1. THE ENFORCEMENT SHALL BE GOVERNED BY THE LAW OF THE RECEIVING STATE AND THAT STATE ALONE SHALL BE COMPETENT TO TAKE ALL APPROPRIATE DECISIONS, SUCH AS THOSE CONCERNING CONDITIONAL RELEASE.

2. THE TRANSFERRING STATE ALONE SHALL HAVE THE RIGHT TO DECIDE ON ANY APPLICATION FOR REVIEW OF A SENTENCE OR OF THE FINDINGS OF FACT ON WHICH THE DECISION OF ITS COURTS LEADING TO THE SENTENCE IS BASED.

3. THE TRANSFERRING STATE ALONE SHALL EXERCISE THE RIGHT OF AMNESTY OR PARDON.

ARTICLE 11

1. THE SENTENCING STATE MAY CONTINUE ENFORCEMENT OF A SANCTION WHEN THE OFFENDER IS ALREADY DETAINED WITHIN
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Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

THAT STATE AT THE MOMENT OF THE PRESENTATION OF THE REQUEST UNTIL THE TRANSFER TAKES PLACE OR THE SENTENCE IS COMPLETED.

2. THE RIGHT OF ENFORCEMENT SHALL REVERT TO THE TRANSFERRING STATE IF IT IS DECIDED BY THE COURTS OF THE RECEIVING STATE THAT THE TRANSFER WAS NOT IN ACCORDANCE WITH THIS TREATY OR ITS LAWS. THE RECEIVING STATE SHALL PROMPTLY NOTIFY THE TRANSFERRING STATE OF ANY SUCH DECISION. THE TRANSFERRING STATE MAY WITHIN 30 DAYS AFTER SUCH NOTIFICATION REQUEST THE OFFENDER'S RETURN.

ARTICLE 12

1. THE COMPETENT AUTHORITIES OF THE RECEIVING STATE SHALL DISCONTINUE ENFORCEMENT AS SOON AS THEY HAVE KNOWLEDGE OF ANY PARDON, AMNESTY OR ANY OTHER DECISION BY REASON OF WHICH THE SANCTION CEASES TO BE ENFORCEABLE.

2. THE TRANSFERRING STATE SHALL WITHOUT DELAY INFORM THE RECEIVING STATE OF ANY DECISION OR PROCEDURAL MEASURE TAKEN ON ITS TERRITORY THAT CAUSES THE RIGHT OF ENFORCEMENT TO LAPSE IN ACCORDANCE WITH THE PRECEDING PARAGRAPH.

(B) MISCELLANEOUS PROVISIONS

ARTICLE 13

THE TRANSIT OF AN OFFENDER THROUGH THE TERRITORY OF A PARTY SHALL BE AUTHORIZED AT THE REQUEST OF THE OTHER CONFIDENTIAL

PARTY, WHERE THE OFFENDER IS BEING TRANSFERRED BETWEEN THE OTHER PARTY AND A THIRD COUNTRY PURSUANT TO A SIMILAR TREATY OR CONVENTION. THE STATE OF TRANSIT MAY REQUIRE AN APPROPRIATE DOCUMENT BEFORE TAKING A DECISION ON SUCH REQUEST. THE PERSON BEING TRANSFERRED SHALL REMAIN IN CUSTODY IN THE TERRITORY OF THE STATE OF TRANSIT.

ARTICLE 14

1. DELIVERY OF AN OFFENDER BY THE AUTHORITIES OF THE TRANSFERRING STATE TO THOSE OF THE RECEIVING STATE SHALL OCCUR AT A PLACE AGREED UPON BY BOTH PARTIES.

2. THE RECEIVING STATE SHALL NOT BE ENTITLED TO ANY REIMBURSEMENT FOR THE EXPENSES INCURRED BY IT IN THE

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

TRANSFER OF AN OFFENDER OR THE COMPLETION OF HIS SENTENCE.

SECTION 2

REQUESTS FOR ENFORCEMENT

ARTICLE 15

ALL REQUESTS SPECIFIED IN THIS TREATY SHALL BE MADE IN WRITING. THEY, AND ALL COMMUNICATIONS NECESSARY FOR THE APPLICATION OF THIS TREATY, SHALL BE SENT THROUGH DIPLOMATIC CHANNELS.

ARTICLE 16

THE REQUEST FOR ENFORCEMENT SHALL BE ACCOMPANIED BY A CERTIFIED COPY OF THE PENAL JUDGMENT WHOSE ENFORCEMENT IS REQUESTED AND ALL OTHER NECESSARY DOCUMENTS, TOGETHER WITH NECESSARY TRANSLATIONS OF THOSE DOCUMENTS INTO THE LANGUAGE OF THE RECEIVING STATE.
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ARTICLE 17

IF THE RECEIVING STATE CONSIDERS THAT THE INFORMATION SUPPLIED BY THE TRANSFERRING STATE IS NOT ADEQUATE TO ENABLE IT TO APPLY THE PRESENT TREATY, IT SHALL ASK FOR THE NECESSARY ADDITIONAL INFORMATION.

ARTICLE 18

1. THE RECEIVING STATE SHALL PROMPTLY INFORM THE TRANSFERRING STATE OF THE ACTION TAKEN ON THE REQUEST FOR ENFORCEMENT.

2. THE AUTHORITIES OF THE RECEIVING STATE SHALL AT THE REQUEST OF THE TRANSFERRING STATE PROVIDE A REPORT ON THE STATUS OF THE ENFORCEMENT OF AN OFFENDER'S SANCTION.

PART III

NON-OFFENDERS

ARTICLE 19

BY SPECIAL AGREEMENT BETWEEN THE PARTIES, PERSONS

ACCUSED OF AN OFFENSE BUT DETERMINED TO BE OF UNSOUND MENTAL CONDITION MAY BE TRANSFERRED FOR APPROPRIATE CARE IN THE COUNTRY OF NATIONALITY.

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PART IV

FINAL CLAUSE
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ARTICLE 20

1. THE PRESENT TREATY SHALL BE SUBJECT TO RATIFICATION AND SHALL ENTER INTO FORCE ON THE DATE ON WHICH INSTRUMENTS OF RATIFICATION ARE EXCHANGED. THE EXCHANGE OF RATIFICATIONS SHALL TAKE PLACE AT .

2. THE PRESENT TREATY SHALL REMAIN IN FORCE INDEFINITELY. EITHER PARTY MAY DENOUNCE THE TREATY BY GIVIN WRITTEN NOTICE TO THE OTHER. SUCH DENUNCIATION SHALL TAKE EFFECT SIX MONTHS AFTER RECEIPT OF SUCH NOTIFICATION."
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Message Attributes

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Decaption Note:
Disposition Action: RELEASED
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Disposition Case Number: n/a
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Subject: U.S. DRAFT OF PRISONER EXCHANGE TREATY
TAGS: CASC, TU
To: ANKARA INFO CIA MULTIPLE
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20 Mar 2014
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